

Message Text

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ACTION EB-08

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FM AMEMBASSY MANILA
TO SECSTATE WASHDC 7445
INFO AMEMBASSY JAKARTA
AMEMBASSY SINGAPORE

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E.O. 11652: N/A
TAGS: EAIR, RP
SUBJECT: GOP REPLY DEPARTMENT'S NOTE ON ALL-CARGO SERVICE

1. EMBASSY HAS RECEIVED NOTE DATE 22 MARCH FROM DEPARTMENT OF FOREIGN AFFAIRS RESPONDING TO A NOTE DATED 28 FEBRUARY FROM THE DEPARTMENT OF STATE ADDRESSED TO THE PHILIPPINE EMBASSY IN WASHINGTON AND REFERRING TO THE ALL-CARGO SERVICES REQUESTED BY PHILIPPINE AIRLINES. AS IS ALTOGETHER TOO OFTEN THE CASE IN MATTERS OF THIS SORT, THE DEPARTMENT OF STATE DID NOT SEND A COPY OF ITS NOTE TO THIS EMBASSY, AND HENCE WE ARE UNABLE TO GUAGE THE EXCHANGE IN ITS ENTIRETY.

2. THE PHILIPPINE NOTE IS FORCEFULLY AND EFFECTIVELY DRAFTED. IT STATES ITS CASE WITH PRECISION AND ENVIABLE CLARITY. IN COMPARISON WITH THE POORLY DRAFTED AND OCCASIONALLY MISLEADING PHRASEOLOGY OF THE USCAB ORDER, IT IS WELL RESEARCHED, ACCURATE, AND FACTUAL IN ITS PRESENTATION OF THE PHILIPPINE CASE.

3. THE EMBASSY IS ACKNOWLEDGING THE PHILIPPINE NOTE AND
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IS ADVISING DFA THAT IT IS BEING REFERRED TO WASHINGTON FOR REPLY. HOWEVER, IT SHOULD BE STATED FOR THE RECORD THAT THE NOTE DOES NOT ASK FOR A REPLY. IT MERELY STATES THE PHILIPPINE CASE AND CORRECTS THE ERRORS IN THE USCAB DECISION, WHICH THIS EMBASSY PRESUMES WERE REPEATED IN THE DEPARTMENT'S NOTE.

4. ALTHOUGH IT IS PERHAPS TOO MUCH TO EXPECT OF ANY ENTRENCHED BUREAUCRACY, THE BEST REPLY TO THIS NOTE WOULD, IN THE EMBASSY'S JUDGMENT, BE A FRANK ADMISSION THAT THE USCAB DECISION WAS IN ERROR, AND WILL BE WITHDRAWN. IF THIS IS DONE AND THE PAL ALL-CARGO APPLICATIONS APPROVED, THE WAY MIGHT BE CLEARED FOR APPROVAL OF FLYING TIGER'S APPLICATION TO THE PHIL CAB FOR AN EQUIPMENT CHANGE.

5. THE TEXT OF THE PHILIPPINE NOTE FOLLOWS:

"NO. 804-77

"THE DEPARTMENT OF FOREIGN AFFAIRS PRESENTS ITS COMPLIMENTS TO THE UNITED STATES EMBASSY AND HAS THE HONOR TO REFER TO THE U.S. STATE DEPARTMENT'S NOTE OF FEBRUARY 28, 1977, TO THE PHILIPPINE EMBASSY IN WASHINGTON, D.C. CONCERNING THE DISAPPROVAL OF THE PROPOSED ALL-CARGO SCHEDULES FILED BY PHILIPPINE AIRLINES WITH THE U.S. CIVIL AERONAUTICS BOARD FOR EFFECTIVITY ON MARCH 1, 1977. THE DEPARTMENT OF STATE INDICATES THAT THE CAB'S DISAPPROVAL WAS BASED ON THE BOARD'S OPINION THAT THE PHILIPPINE GOVERNMENT HAD FAILED TO GIVE SYMPATHETIC CONSIDERATION TO APPLICATIONS BY UNITED STATES AIRLINES FOR ALL-CARGO SERVICE UNDER THE 1974 INTERIM ARRANGEMENT. THE DEPARTMENT IN ITS NOTE FURTHER SUGGESTS THAT THE CAB WOULD ALLOW THE PAL SCHEDULES TO GO INTO EFFECT, IF THE PHILIPPINE GOVERNMENT SHOULD AUTHORIZE FLYING TIGER LINE TO CHANGE FROM DC-8 TO B747 EQUIPMENT. THIS, ACCORDING TO THE DEPARTMENT'S NOTE, WOULD BE CONSIDERED BY THE CAB TO BE "EVIDENCE OF SYMPATHETIC CONSIDERATION."
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"MY GOVERNMENT MUST TAKE EXCEPTION TO THE IMPLICATION IN THE U.S. STATE DEPARTMENT'S NOTE THAT A DECISION BY THE CIVIL AERONAUTICS BOARD IS A PROPER DETERMINATION UNDER THE INTERIM ARRANGEMENT OF 1974. THE INTERIM ARRANGEMENT IS AN EXCHANGE OF NOTES BETWEEN GOVERNMENTS AND WHETHER OR NOT THE GOVERNMENT OF THE PHILIPPINES FAILED TO GIVE "SYMPATHETIC CONSIDERATION" IS A MATTER FOR DISCUSSION BETWEEN THE GOVERNMENTS, AND NOT FOR UNILATERAL DECISION BY THE CIVIL AERONAUTICS BOARD.

IT IS THE CONSIDERED OPINION OF MY GOVERNMENT THAT THE PHILIPPINE CIVIL AERONAUTICS BOARD HAS ACCORDED MORE THAN SYMPATHETIC CONSIDERATION TO APPLICATIONS BY UNITED STATES CARRIERS FOR ALL-CARGO SERVICES, AND THAT THE ACTION OF THE U.S. CAB IN DISAPPROVING THE SCHEDULES SUBMITTED BY PHILIPPINE AIRLINES WAS A DIRECT AND OUTRIGHT BREACH OF AN OBLIGATION OF THE UNITED STATES EMBODIED IN THE INTERIM ARRANGEMENT.

"IN ORDER OF THE U.S. CAB DISAPPROVING THE PHILIPPINE AIRLINES SCHEDULES BASES BOARD ACTION ON TWO SEPARATE ITEMS. INITIAL REFERENCE WAS MADE TO ALL-CARGO SERVICE OF PAN AMERICAN WORLD AIRWAYS, WHICH WAS ALLOWED TO LAPSE IN DECEMBER, 1974, AND WHOSE APPLICATION FOR RENEWAL WAS DENIED. THE DENIAL STEMS FROM THE FACT THAT THE ORIGINAL CARGO APPLICATION OF PAN AMERICAN HAD BEEN GRANTED ON THE UNDERSTANDING THAT PAN AMERICAN'S CARGO FLIGHTS WERE (BEGIN UNDERLINE) MILITARY CARGO FLIGHTS. (END UNDERLINE). PAN AMERICAN THEREAFTER MADE VARIOUS APPLICATIONS TO THE PHILIPPINE CIVIL AERONAUTICS BOARD STATING THAT IT HAD CERTAIN SPACE AVAILABLE ON THESE MILITARY FLIGHTS WHICH COULD BE UTILIZED FOR COMMERCIAL CARGO, AND REQUESTED APPROVAL FROM THE PHILIPPINE CAB TO CARRY A LIMITED AMOUNT OF SUCH CARGO THEREON. THIS PERMISSION WAS GRANTED IN RESPECT TO ONE OF THREE "MILITARY" CARGO FLIGHTS AUTHORIZED UNTIL LIMITED OFFICIAL USE

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IT WAS DETERMINED THROUGH A LETTER FROM REAR ADMIRAL D.B. SHELTON, U.S. CO-CHARIMAN OF THE MUTUAL DEFENSE BOARD (AND LATER ADMITTED BY PAN AMERICAN ITSELF) THAT WHAT THE PHILIPPINE CAB HAD BEEN LED TO BELIEVE BY PAN AMERICAN WERE FLIGHTS FOR MILITARY CARGO WHEN IN TRUTH AND IN FACT THEY WERE COMMERCIAL CARGO FLIGHTS. TO HAVE SO MISLED THE

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FM AMEMBASSY MANILA

TO SECSTATE WASHDC 7446

INFO AMEMBASSY JAKARTA

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PHILIPPINE CAB WAS IN OUR VIEW A DEMONSTRATION OF LACK OF FITNESS, WILLINGNESS AND ABILITY ON THE PART OF PAN AMERICAN TO OPERATE SUCH CARGO FLIGHTS. SPECIFIC DETAILS OF SEVERAL PAN AMERICAN'S DOCUMENTS EVIDENCING LACK OF SINCERITY AND ADHERENCE TO TRUTH HAVE BEEN INFORMALLY DELIVERED TO THE STAFF OF THE UNITED STATES CAB. IT IS NOW NOTED THAT RENEWAL OF PAN AMERICAN'S ALL-CARGO OPERATIONS IS NO LONGER REGARDED BY THE DEPARTMENT OF STATE AS NECESSARY AS EVIDENCE OF "SYMPATHETIC CONSIDERATION."

"THE OTHER ASPECT ON WHICH THE U.S. CAB ORDER RELIES IN DISAPPROVING PAL'S ALL-CARGO SCHEDULE IS THE ALLEGED REFUSAL OF THE PHILIPPINE GOVERNMENT TO PERMIT FLYING TIGER LINE TO SUBSTITUTE B747 ALL-CARGO EQUIPMENT FOR ITS CURRENTLY USED DC-8 ALL CARGO AIRCRAFT. THE BOARD NOTED THAT FLYING TIGER, IN OCTOBER 1976, FILED AN APPLICATION FORMALLY PROPOSING TO LIMIT CARGO CARRIED TO AND FROM THE PHILIPPINES ON ITS PROPOSED B747 SERVICE TO THAT WHICH COULD BE ACCOMMODATED ON ITS DC-8 AIRCRAFT. IT FURTHER NOTED "AND DESPITE THE ABSENCE OF ANY ECONOMIC EFFECT WHATSOEVER ON THE PHILIPPINES FROM THIS PROPOSED EQUIPMENT SUBSTITUTION, THE PHILIPPINE GOVERNMENT TO DATE HAS TAKEN NO ACTION ON LIMITED OFFICIAL USE

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THE APPLICATION."

"THE DEPARTMENT'S NOTE OF FEBRUARY 28 REPEATS THE BOARD'S STATEMENT BY ASSERTING THAT THE FLYING TIGER'S CHANGE OF AIRCRAFT WITH ITS LIMITATION ON CAPACITY WOULD HAVE NO ECONOMIC IMPACT ON THE PHILIPPINES. THIS STATEMENT COULD CONCEIVABLY BE ACCEPTED IF FLYING TIGER'S OPERATION BOTH WITH THE DC-8 AND B747 EQUIPMENT WERE LIMITED TO THIRD AND FOURTH FREEDOM TRAFFIC BETWEEN THE UNITED STATES AND THE PHILIPPINES. SUCH, HOWEVER, IS NOT THE CASE. THE FLYING TIGER SCHEDULE BETWEEN THE UNITED STATES AND MANILA INVOLVES THREE FLIGHTS A WEEK ALL NUMBERED 045 WESTBOUND AND 042 EASTBOUND. ON FLIGHTS ARRIVING IN MANILA ON SATURDAY AND MONDAY, ROUTING BY FLYING TIGER FROM THE UNITED STATES IS FROM LOS ANGELES TO SAN FRANCISCO, SEATTLE, TOKYO, OKINAWA AND MANILA, THEN TO HONGKONG FROM WHENCE IT RETURNS TO THE UNITED STATES THROUGH OSAKA, TOKYO, ANCHORAGE, SAN FRANCISCO AND LOS ANGELES. THE 045 FLIGHT ARRIVING IN MANILA ON THURSDAY IS THE SAME, EXCEPT THAT THE AIRCRAFT TURNS AROUND AS FLIGHT 042 AT MANILA AND GOES TO KAOHSIUNG, OSAKA, TOKYO, ANCHORAGE, SAN FRANCISCO AND LOS ANGELES. THE PHILIPPINE GOVERNMENT HAS IMPOSED NO RESTRICTION ON FLYING TIGER'S OPERATION THROUGH THESE POINTS. THE COMPANY MAY CO-MINGLE TRAFFIC DESTINED TO HONGKONG/TAIWAN/OKINAWA AND OSAKA/

TOKYO WITH TRAFFIC TO MANILA ON THE SAME AIRCRAFT, AS IN FACT IT HAS DONE SO IN ITS CURRENT OPERATIONS. IN ADDITION, IT MAY ENGAGE IN THE CARRIAGE OF FIFTH FREEDOM TRAFFIC AT ANY OF THESE POINTS TO OR FROM MANILA. OPERATION OF AN AIRCRAFT CO-MINGLING TRAFFIC TO VARIOUS POINTS ON ITS ROUTE NECESSARILY REQUIRES SOME LIMITATION CARGO CAPACITY TO EACH POINT. AT THE PRESENT TIME, ALL-CARGO AIRCRAFT OPERATING TO MANILA MUST BEAR THE BURDEN OF LIMITING MANILA CARGO, WHENEVER CO-MINGLED CARGO IS TO BE BOARDED. BY CHANGING TO THE MUCH LARGER, WIDE-BODIED B747, THE FLYING TIGER LINE WOULD BE ABLE TO CARRY A FULL DC-8 LOAD OF CARGO TO MANILA IN ADDITION TO FULL DC-8 LOADS TO HONGKONG/TAIWAN, LIMITED OFFICIAL USE

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OKINAWA, OSAKA/TOKYO. IT IS NOT DIFFICULT TO SEE THE SUBSTANTIAL ADVANTAGE WHICH FLYING TIGER WOULD GAIN BY THIS SUBSTITUTION OF EQUIPMENT AND THE COMPETITIVE DISADVANTAGE TO WHICH THE PHILIPPINE CARRIER WOULD BE SUBJECTED IN ALLOWING THE CHANGE OF EQUIPMENT. CO-MINGLING TRAFFIC TO THRID COUNTRIES WITH THAT DESTINED TO MANILA IS A SITUATION WHICH HAS STRONG ECONOMIC EFFECT ON A CARRIER'S OPERATION. THE UNITED STATES CAB HAS FULLY RECOGNIZED THIS PRINCIPLE IN THE ENACTMENT OF ITS PART 216. CO-MINGLING HAS ITS DRAWBACKS, HOWEVER, IN THAT TRAFFIC TO EACH POINT MUST BE LIMITED TO ACCOMMODATE TRAFFIC TO OTHER POINTS. WITH THE INCREASE IN THE SIZE OF THE AIRCRAFT, THE ADVANTAGE TO THE OPERATOR OF THE LARGER AIRCRAFT IS OBVIOUS.

"IN THE FOREGOING CONNECTION, IT IS STRESSED THAT THE PHILIPPINE CAB HAS AUTHORIZED FLYING TIGER TO CO-MINGLE THE TRAFFIC ON ITS ROUTE, AND TO ENGAGE IN FIFTH FREEDOM CARGO OPERATION, NOTWITHSTANDING THE FACT THAT THE ONLY COMMITMENT OF THE PHILIPPINES UNDER THE INTERIM ARRANGEMENT IS "TO GIVE SYMPATHETIC CONSIDERATION TO APPLICATIONS

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FM AMEMBASSY MANILA

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INFO AMEMBASSY JAKARTA

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FROM UNITED STATES AIRLINES FOR ALL-CARGO SERVICES ON AUTHORIZED ROUTES." THE CURRENT ROUTING OF FLYING TIGER IS NOT A PRE-EXISTING AUTHORIZED ROUTE. PHILIPPINE AIRLINES' ROUTE IS ONLY FROM MANILA VIA HONOLULU TO SAN FRANCISCO AND INCLUDES NON OF THE THIRD COUNTRY POINTS AUTHORIZED TO FLYING TIGER.

"THE FLYING TIGER LINE DOES NOT HAVE A PERMANENT LICENSE FROM THE PHILIPPINES. IN OFFICIAL RECORDS OF THE PHILIPPINE CAB, THE ORIGINAL GRANT OF AUTHORIZATION TO THE FLYING TIGER LINE WAS PREDICTED IN THE PHILIPPINES OBTAINING AND SECURING RECIPROCAL RIGHTS. IN THE ASSUMPTION THAT SUCH AN EXCHANGE OF RIGHTS COULD BE ARRANGED AS A MATTER OF RECIPROCITY, THE PHILIPPINE CAB PROVISIONALLY AUTHORIZED FLYING TIGER LINE TO OPERATE ITS CARGO SCHEDULES. WHEN REPEATED REQUESTS, HOWEVER, WERE MADE TO THE UNITED STATES REPRESENTATIVES FOR GUAM RIGHTS, THE PHILIPPINE OFFICIALS WERE TOLD THAT REPRESENTATIONS MADE BY FLYING TIGER IN NO WAY REPRESENTED THE OFFICIAL POSITION OF THE UNITED STATES AND THAT THERE WAS NO OBLIGATION ON THE PART OF THE UNITED STATES GOVERNMENT TO GRANT GUAM RIGHTS TO PAL. WHEN, HOWEVER, THE PHILIPPINES INDICATED ITS INTENTION TO ALLOW LIMITED OFFICIAL USE

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THE FLYING TIGER LICENSE TO LAPSE, BECAUSE OF FAILURE OF CONSIDERATION, THE UNITED STATES STRONGLY OBJECTED, AND NEGOTIATIONS FOR THE INTERIM ARRANGEMENT IN 1974 WERE STALLED UNTIL ASSURANCES WERE GIVEN THAT THE TEMPORARY LICENSE OF FLYING TIGER WOULD BE ALLOWED TO CONTINUE.

"THE PHILIPPINE GOVERNMENT HAS LONG EXPRESSED THE DESIRE STATED IN THE DEPARTMENT'S NOTE THAT UNITED STATES-PHILIPPINES CIVIL AVIATION RELATIONS SHOULD BE IMPROVED. IT IS REALIZED THAT SUCH IMPROVEMENT CANNOT COME UNILATERALLY FROM THE PHILIPPINES AS SUCH RELATIONS MUST REST ON THE FOUNDATION OF FAIRNESS, EQUITY AND GOOD WILL ON THE PART OF BOTH COUNTRIES.

"THE DEPARTMENT OF FOREIGN AFFAIRS AVAILS ITSELF OF

THIS OPPORTUNITY TO RENEW TO THE AMERICAN EMBASSY THE
ASSURANCES OF ITS HIGHEST CONSIDERATION.

"MANILA, 22 MARCH 1977"

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